

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GMO GAMECENTER USA, INC., : Case No.: 22-cv-5974

et al., :

Plaintiffs, :

v. :

WHINSTONE US, INC. , : New York, New York

Defendant. : April 20, 2023

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TRANSCRIPT OF STATUS CONFERENCE HEARING
BEFORE THE HONORABLE KATHARINE H. PARKER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: HAYNES AND BOONE LLP
BY: Leslie C. Thorne, Esq.
Michael Freyberg, Esq.
30 Rockefeller Plaza
New York, New York 10012

For Defendant: DEBEVOISE & PLIMPTON LLP
BY: Maeve L. O'Connor, Esq.
Brandon R. Fetzer, Esq.
Elliot Greenfield, Esq.
66 Hudson Boulevard
New York, New York 10001

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PROCEEDINGS

1 THE DEPUTY CLERK: Calling Case
2 22-cv-5974; GMO Gamecenter versus Whinstone US.

3 Beginning with counsel for the plaintiff,
4 please make your appearance for the record.

5 MS. THORNE: Leslie Thorne and Mike
6 Freyberg for GMO.

7 THE COURT: Hi.

8 THE DEPUTY CLERK: And counsel for the
9 defendants, please make your appearance for the
10 record.

11 MS. O'CONNOR: Maeve O'Connor, Elliot
12 Greenfield and Brandon Fetzer of Debevoise &
13 Plimpton for defendant.

14 THE COURT: Hello.

15 MS. O'CONNOR: Good morning.

16 THE COURT: Okay. So it's a case
17 management conference today. Before we -- before
18 you fill me in on discovery issues, have the parties
19 had any more discussions about settlement? Is that
20 something that --

21 MS. THORNE: We have --

22 THE COURT: -- is still possible?

23 MS. THORNE: I don't think so. Not at
24 this time. Whinstone representatives did travel to
25 Japan this week, earlier this week, to meet with

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1 GMO, and they had a couple of days to discuss
2 whether there was some business solution here. I
3 don't think there is at this time. I would not say
4 that's a forever situation, but I think, given the
5 discovery that's happened since the last settlement
6 meeting, and also we visited the Rockdale facility.

7 THE COURT: Great.

8 MS. THORNE: I think there are going to
9 be significant factual issues that the parties are
10 going to need to, sort of, hash out and do a bit
11 more discovery before any more settlement
12 discussions are to be fruitful. But I'm curious to
13 hear opposing counsel's view on this.

14 THE COURT: Okay.

15 MS. O'CONNOR: Thank you, Your Honor.

16 We're obviously brand new to the case,
17 having just substituted in this week, but our
18 understanding is the same, that the parties did have
19 this, kind of, business person to business person
20 meeting in Japan that was not fruitful. It doesn't
21 seem as though there's a path at present. And so
22 we'll have to be litigating. And I'm sure that if
23 an opportunity comes along for further discussions
24 that folks think will be fruitful, I'm sure that
25 both parties will be open to engagement.

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1 THE COURT: And so did your team visit
2 the facility?

3 MS. O'CONNOR: Not our personal team, but
4 the client's business people from our side traveled
5 to Japan.

6 THE COURT: No, no. I'm talking about
7 have the lawyers seen the facility in Texas?

8 MS. O'CONNOR: No.

9 THE COURT: Because there's factual
10 issues, I think, about the space and the state of
11 the machines, Gamecenter's machines. Are they
12 actually working? How up to date are they?

13 There's allegations that they're -- as I
14 understand it, that they're antiquated and not even
15 able to use the power that was available. So I had
16 suggested that the lawyers need to go look at the
17 building and the machines in the building as
18 compared to other machines. Has your team done that
19 yet?

20 MS. O'CONNOR: Our -- it was plaintiffs
21 who did that.

22 THE COURT: Okay.

23 MS. O'CONNOR: And I didn't have an
24 understanding -- we obviously knew that --

25 THE COURT: Yeah.

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1 MS. O'CONNOR: -- the direction had also
2 been at counsel for defendant --

3 THE COURT: I mean, I think it would be
4 helpful for counsel to see it in person.

5 MS. O'CONNOR: Yes. In-house counsel for
6 defendant, I believe, has seen it.

7 THE COURT: All right. It's probably
8 helpful for outside counsel, too, actually, so that
9 you know what's -- you know, what it looks like.

10 So tell me from plaintiff's counsel
11 perspective what's happened since I last saw you
12 from discovery. Is discovery on track?

13 MS. THORNE: I would say discovery has
14 proceeded. Both sides have continued to assemble
15 documents, gather documents from their clients. I
16 think there's a significant amount to be done. And
17 I think also -- we had a chance to visit this
18 morning for the first time, and it's been -- we
19 discussed potential changes to the schedule that we,
20 I think, agree on in light of new counsel getting up
21 to speed and also making sure that there's time for
22 production of the documents before we move into full
23 deposition discovery.

24 We've also set up a discussion for next
25 week to finalize the ESI protocol, which no issue

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1 with ESI protocol, it's more the logistics of how to
2 search for documents, making sure we're all on the
3 same page and minimize any disputes later on with
4 respect to, you know, responsiveness.

5 THE COURT: Okay. So what is it that you
6 are anticipating, and what's the new schedule that
7 you're proposing?

8 MS. THORNE: Big picture, we received a
9 proposal from opposing counsel this morning that
10 essentially pushed back all of the deadlines about
11 three months, and also added a couple of deadlines
12 for expert reports because I think both sides
13 anticipate that this is going to be a heavy, heavy
14 expert case.

15 And so we would be -- we're not in a
16 position right now to -- I don't have a draft for
17 you, but I anticipate that in short order, you know,
18 potentially even today, we submit an agreed order
19 with respect to deadlines that I believe are pushing
20 all of the existing deadlines back for three months
21 and put expert report deadlines in mid-December and
22 rebuttal experts in mid-January.

23 THE COURT: And remind me, how many
24 experts is your side intending to call?

25 MS. THORNE: I anticipate we will have --

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1 not including any attorney's experts, probably
2 three.

3 THE COURT: Three. Okay.

4 And what are the topics for those
5 experts?

6 MS. THORNE: Damages. We also intend to
7 have an expert on the machines specifically, a
8 technical expert on that. As well as potentially an
9 expert to, sort of, explain the business and the
10 market so that that can be better understood is what
11 we're anticipating.

12 THE COURT: Okay. And so you've
13 exchanged document requests --

14 MS. THORNE: Yes, we've received document
15 requests --

16 THE COURT: -- and responses?

17 MS. THORNE: -- written responses and
18 limited productions, both sides. Although I think
19 we both acknowledge that we will have additional
20 documents to produce based on word searches of
21 certain custodians.

22 THE COURT: So when do you think you'll
23 be in a position to start fact depositions?

24 MS. THORNE: I would say in late May is
25 my -- would be my best guesstimate.

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1 THE COURT: Okay. And I guess some of
2 the fact individuals were here at the -- fact
3 witnesses would be here at the -- were here at the
4 settlement conference.

5 MS. THORNE: Correct.

6 THE COURT: Right. Okay.

7 MS. THORNE: Although I think there will
8 probably also be some third-party depositions. For
9 instance, Whinstone's former CEO has left the
10 company, and so I don't know if we'll be able to
11 arrange that with opposing counsel. I don't know
12 what the relationship is or whether we'll need to,
13 you know, do that sort of outside of party
14 negotiation.

15 There are also, I think, some who were
16 involved in the negotiation of the original
17 agreement who were with a company called Northern
18 Data, who Riot bought Whinstone from. And so we'll
19 need to -- I anticipate wanting to depose one or two
20 of those people as well.

21 THE COURT: Okay. So since you're headed
22 into the summer season, I'd like counsel to talk
23 about holding dates for depositions to get -- you
24 know, so that you can get things scheduled, and
25 you're not coming to me for extensions because of

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1 people's vacation schedules. Get those -- it's
2 always hard to get dates over the summer, and that's
3 what your schedule is contemplating. So you should
4 talk early, even if you don't have -- know the exact
5 order, get counsel time, dates, and then you can
6 pencil in the witnesses.

7 Okay. From defendant's standpoint, where
8 are you in discovery? What are you anticipating?
9 Is it basically in line with what plaintiff's
10 counsel has said?

11 MS. O'CONNOR: I think it's -- I think
12 it's quite similar. My expectation is that many of
13 the fact depositions will probably be in September
14 because of substantial completion of document
15 production. It just makes more sense to try to get
16 all that done first. And I think we had talked
17 about substantial completion maybe in August. And
18 so it may be that the depositions take place
19 slightly differently in terms of how we fill out the
20 months ahead. But, nonetheless, I think, generally,
21 that's about what we would envision.

22 We would envision similar experts in our
23 case, and agree that there will be some third-party
24 discovery and some party depositions. And we can
25 certainly start to block out a schedule and start

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1 holding some dates so that we are sure we can get it
2 all in.

3 THE COURT: Okay. Now, what are you
4 anticipating to be the volume of documents? Because
5 it seems to me that there's just some -- there's --
6 I mean, there's some e-mail communications,
7 obviously, because there were some e-mail
8 communications about this power, whether it was
9 needed, whether additional space was needed in the
10 other building or not. So there's some e-mails back
11 and forth, but the number of custodians, it seems to
12 me, is not really that great. But tell me if I'm
13 wrong.

14 MS. O'CONNOR: I think I agree that the
15 number of custodians is not huge. And I think we
16 will have a much better sense of volume once we
17 exchange our proposed search terms and run them and
18 look at how many hits we get. We're now in the
19 process of transferring the database that exists
20 over to our firm so that we can start seeing what's
21 in there. So I don't have a huge -- I don't have a
22 great sense right now of what the volume will be, so
23 I'm a little nervous about saying we'll get to
24 substantial completion so quickly that we'll be able
25 to kick off into all depositions in May. I'm not

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1 sure that's right. But we're certainly not looking
2 to unduly slow things either. We just don't have
3 all the visibility yet.

4 THE COURT: How many Japanese language
5 documents do you think there may be, and have you
6 addressed that in -- you know, in your protocols, or
7 your draft protocols?

8 MS. THORNE: And I'm happy to address --

9 THE COURT: Yeah.

10 MS. THORNE: -- that. We discussed that
11 with prior counsel.

12 THE COURT: Yeah.

13 MS. THORNE: We did discuss that. I
14 don't anticipate there will be that many. All of
15 the parties' communications with each other are in
16 English. And I think a good bit of the discovery in
17 this case will actually be not communications per se
18 by e-mail, more data logs --

19 THE COURT: Right.

20 MS. THORNE: -- and both -- internal to
21 both parties, and also, sort of, they use the system
22 to create, sort of, work orders and requests for
23 (inaudible) and issues like that. And so I think
24 that will be most of it.

25 So I think the only Japanese language

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1 documents will be our internal documents. We have
2 discussed with opposing counsel that we would just
3 produce those in Japanese. Obviously, to submit
4 things to the Court, both parties anticipated hiring
5 certified translators to produce certified copies,
6 to the extent that we need it.

7 But we had set up counsel in Japan to
8 review the Japanese documents -- obviously, I do not
9 speak Japanese -- and consult closely with us to
10 make sure that they're catching everything. But
11 that was what we discussed with opposing counsel.
12 We're happy to --

13 THE COURT: Right, because the search
14 terms will have to be --

15 MS. THORNE: Yes.

16 THE COURT: -- tailored --

17 MS. THORNE: Yes.

18 THE COURT: -- for that.

19 MS. THORNE: Correct.

20 THE COURT: Okay. Any other issues that
21 you're anticipating at this point in discovery?

22 MS. THORNE: I don't think so.

23 MS. O'CONNOR: Not for defendant. Thank
24 you, Your Honor.

25 THE COURT: No? Okay.

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1 So seems to me then I can have a status
2 letter in 30 days as to how you're going in
3 discovery. And we can, maybe, schedule a conference
4 for the summer.

5 You should follow my rules in terms of
6 any discovery issues that pop up. Just send me a
7 letter. I'll schedule a conference. If it seems as
8 if there's a lot of issues, then I'm going to
9 schedule regular conferences. Right now it doesn't
10 seem like there's -- you're headed toward that path.
11 I hope that you're not, and then you can meet and
12 confer and work out everything. But I'll try to
13 meet with you to resolve issues to the extent I can
14 in conferences without the need for a lot of motion
15 practice; okay?

16 Anything else?

17 MS. THORNE: Not from plaintiffs, Your
18 Honor.

19 THE COURT: No?

20 MS. THORNE: Well, actually, one other
21 thing.

22 THE COURT: Oh.

23 MS. THORNE: I anticipate that we'll file
24 by the end of the week a motion to extend the
25 deadline. And then we'll also plan to do the status

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1 letter in 30 days, but I just wanted to tag that
2 we'll get that on file.

3 THE COURT: Yeah, you should do that.
4 And did you -- forgive me if I'm misremembering.
5 Did you already submit a proposed protective order?

6 MS. THORNE: Yes.

7 THE COURT: You did do that. Okay. All
8 right. Good.

9 MS. O'CONNOR: Nothing further for
10 defendant.

11 THE COURT: All right. Nice to see
12 everybody. Welcome, to new counsel. Okay.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of GMO Gamecenter USA, Inc. v. Whinstone US, Inc., Docket #22CV5974 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano
ADRIENNE M. MIGNANO, RPR

Date: April 21, 2023